

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of the Residential
Building Contractor License of
Extreme Weather Exteriors, Inc.,
License No. 20098984

FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION

The above matter came on for a hearing before Administrative Law Judge Eric L. Lipman on May 2, 2007 at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. The hearing record closed on that day.

Michael J. Tostengard, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared representing the Department of Labor and Industry ("the Department").

Vincent R. Chase, President, Extreme Weather Exteriors, Inc., 21414 Lake George Drive, N.W., Oak Grove, MN 55011, appeared on behalf of Respondent Extreme Weather Exteriors, Inc. ("Respondent" or "EWE").

STATEMENT OF ISSUES

1. Did Respondent, by failing to pay Rasmussen Metal Roofing the sums billed in the latter's invoices, violate Minn. Stat. § 326.91, subd. (1) (8) (2006)?

The Administrative Law Judge concludes that notwithstanding the receipt of \$54,887.06 in project-related funds, Respondent has, without justification, failed to pay the \$12,558.89 balance on invoices from Rasmussen Metal Roofing. Respondent has thereby violated Minn. Stat. § 326.91, subd. (1) (8) (2006).

2. Did Respondent demonstrate financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(6) (2006), by presenting W&D Sheet Metal with a check for which there was insufficient funds?

The Administrative Law Judge concludes that the failure to remit to W&D Sheet Metal the owed sums does demonstrate financial irresponsibility in violation of Minn. Stat. § 326.91, subd. (1) (6) (2006).

3. Does Respondent's conviction for the crime of Issuance of a Dishonored Check demonstrate incompetence, untrustworthiness, and financial irresponsibility in violation of Minn. Stat. § 326.91, subd. (1) (6) (2006)?

The Administrative Law Judge concludes that the Respondent's conviction for the crime of Issuance of a Dishonored Check does demonstrate incompetence, untrustworthiness, and financial irresponsibility in violation of Minn. Stat. § 326.91, subd. (1) (6) (2006)

4. Is discipline of Respondent in the public interest?

The Administrative Law Judge concludes that discipline of Respondent is in the public interest.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent is currently licensed as a residential building contractor, License No. 20098984.^[1]

2. Kloster Kustom Design, Incorporated, was the general contractor on a home building project for Patrick and Carolyn Graiziger. The home was constructed at 21260 Lake George Drive in Oak Grove, Minnesota.^[2]

3. Kloster Kustom Design, Inc., undertook a subcontract relationship with Extreme Weather Exteriors, Inc. ("EWE") for exterior work on the home.^[3] Vincent R. Chase ("Chase"), President of EWE, resides in a nearby home on Lake George Drive and has considerable experience in the construction trades.^[4]

4. In May of 2006, Chase, as the President of EWE, submitted a proposal to Kloster Kustom Design for roofing and siding work to the Graiziger home.^[5] The EWE proposal listed the price for installation of the metal roof to the house and attached garage as \$19,200.^[6]

5. In July of 2006, Chase, as the President of EWE, entered into a vendor relationship with Rasmussen Metal Roofing ("Rasmussen").^[7] Rasmussen is an authorized vendor and installer of metal roof components developed by the Firestone Building Products Company ("Firestone").^[8]

6. Because the metal roof components sold by Firestone are custom fabricated for a particular home, and are not fungible items that can be easily retrofitted for use in other projects, Rasmussen and Firestone require advance payment of an earnest money deposit equal to 50 percent of the overall contract price.^[9] Once sufficient sums are in hand to cover the material costs, Firestone will begin the custom fabrication process for the components of a particular metal roof project.^[10]

7. On or about July 14, 2006, EWE paid Rasmussen a \$9,000 deposit toward installation of a Firestone metal roof on the Graiziger home.^[11]

8. In the autumn of 2006, Rasmussen installed the metal roof on the Graiziger home.^[12] In order to secure payment for the completed installation both Rasmussen and Firestone separately tendered detailed warranties guaranteeing the performance of the completed roof.^[13]

9. Notwithstanding the tender of these warranties, Chase and EWE have refused to pay Rasmussen the balance of the sum totaled by Rasmussen at the completion of the installation.^[14] Rasmussen asserts that the outstanding and past due balance on the Graiziger home project is \$12,558.83.^[15]

10. On or about December 11, 2006, Kloster Kustom Design, Incorporated released to Respondent construction-related funds in the amount of \$54,887.06.^[16]

11. Chase and EWE has interposed a number of objections to paying Rasmussen the invoiced sums; claiming that many of agreed-upon elements of the EWE-Rasmussen oral contract were not performed.^[17]

12. Following Chase and EWE's failure to pay the invoiced sums, a complaint was made to the licensing authorities at the Department of Labor and Industry.^[18]

13. During the Department's investigation of the circumstances surrounding the Graiziger home project, investigators learned that in April of 2000 Respondent issued an insufficient funds check to W&D Sheet Metal.^[19] The check, drawn in the amount of \$633.35, was issued as part of a purchase for certain construction materials.^[20]

14. During the Department's investigation of the circumstances surrounding the Graiziger home project, investigators learned that in 2001 Vincent R. Chase had been convicted of the crime of Issuance of a Dishonored Check.^[21] The check was issued as part of a purchase for concrete mix from the Isanti Ready Mix Company.^[22]

15. Under the terms of an Order issued by the Commissioner and Labor and Industry on March 9, 2007, EWE's residential building contractor's license, No. 20098984, was summarily suspended pending final determination in this matter.^[23]

Based upon the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter under Minn. Stat. §§ 14.50, 45.027, and 326.91.

2. The Respondent was given timely and proper notice of the hearing in this matter.

3. In order to prevail, the Department must prove by a preponderance of the evidence that the alleged violations occurred.

4. Minn. Stat. § 326.91, subd. (1) (6) authorizes the Commissioner to deny, suspend, revoke, censure, or fine any licensee if the licensee "has been shown to be incompetent, untrustworthy, or financially irresponsible," and if the action is in the public interest.

5. Minn. Stat. § 326.91, subd. (1) (4) authorizes the Commissioner to deny, suspend, revoke, censure, or fine any licensee if the licensee "has performed negligently or in breach of contract, so as to cause injury or harm to the public," and if the action is in the public interest.

6. The Department has proved by a preponderance of the evidence that Respondent has acted in ways that are incompetent, untrustworthy or financially irresponsible, and that a regulatory sanction is in the public interest.

7. The Department has proved by a preponderance of the evidence that Respondent is in breach of contract, by failing, without justification, to remit sums due and owing under its contract with Rasmussen Metal Roofing.

8. The Memorandum that follows explains the reasons for these Conclusions. To the extent that the Memorandum includes matters that are more appropriately described as Conclusions, the Administrative Law Judge incorporates those items into these Conclusions.

9. Further, the Administrative Law Judge adopts as Conclusions any Findings of Fact that are more appropriately described as Conclusions.

Based upon the foregoing Conclusions, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that disciplinary action be taken against the residential building contractor's license of Extreme Weather Exteriors, Inc.

Dated this 11th day of June, 2007.

/s/ Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Taped, 1 cassette
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommended Decision. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Scott Brener, Commissioner, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155, or call the Department at (651) 284-5005 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

This matter pivots around three independent claims for discipline of EWE and its corporate principal, Vincent R. Chase. Below, each of the claims is addressed in turn.

Breach of Contract – Failure to Pay Vendor Claim

At the outset, it is important to note that Minn. Stat. § 326.91 has a transformative effect upon those who accept licensure as a residential building contractor. Following licensure, a license holder is no longer like other commercial actors in the marketplace; a licensee is held to a much higher set of professional and commercial standards.

This case makes clear how this principle is true. Mr. Chase claims that a series of items that were part of the oral agreement with Rasmussen, and due for performance, were not completed.^[24] Clearly, a firm in another, unregulated trade could make the raw, dollars-and-cents calculation as to whether it is

worthwhile to litigate claims against its vendors – even very flimsy ones – until the last round of collection actions is exhausted. Indeed, some businesses might find it easier and financially beneficial to bury their creditors in litigation instead of paying just claims on time.

Yet, the holder of a residential contracting license is not so uninhibited. In Minnesota, clinging doggedly to feeble claims when payment is otherwise due is a sign of unprofessionalism; and these practices may subject a licensed contractor to discipline.

The practical import of Minn. Stat. § 326.91, therefore, is that it obliges licensed contractors to be very detail-oriented, to scrupulously document contractual arrangements and to be conciliatory in the face of conflict with their commercial partners. In the context of maintaining a license and one's standing in the residential contracting profession, an unreasonable litigation position with a customer or supplier are no longer simply matters of time and money; for the licensed contractor, the ability to work in the profession may also be in the balance.

In this case, Mr. Chase met none of the higher professional standards imposed by Minn. Stat. § 326.91, subd. (1) (4) and (1) (8). For example, his insistence that the entire Graiziger roof be covered with a certain grade of ice and heat shield coating before the metal roofing panels were affixed,^[25] is based upon nothing more than his bald assertion that this is the correct roofing practice. This claim is belied by the warranties extended by Rasmussen and Firestone, as well as the uncontradicted testimony that the completed roof meets the requirements of the building code.^[26] Moreover, if a special method of performance was essential to the EWE-Rasmussen contract, presumably some writing would have made this condition clear. However, neither EWE's proposal to Kloster Kustom Design, nor the contemporaneous documents between EWE and Rasmussen, attests to such a distinctive feature.^[27] Under such circumstances, it was unreasonable and unprofessional for Chase to insist that Rasmussen perform duties that were never reduced to writing, and were not otherwise part of the steps that were needed to install a metal roof that is warrantable or that met the requirements of the building code.

Financial Irresponsibility Claim 1: The Check to W&D Sheet Metal

As detailed above, during the Department's investigation of the circumstances surrounding the Graiziger home project, investigators learned that in April of 2000 Respondent issued a check to W&D Sheet Metal for which there were insufficient funds. The check, drawn in the amount of \$633.35, was issued as part of a purchase of certain construction materials.

Mr. Chase testified that the original arrangement with Mr. Hoa Do of W&D Sheet Metal was to the effect that Mr. Do was requested by Chase to hold the

check, without cashing it, until funds could be come available.^[28] Chase criticizes Do's lack of English language skills as the source of the later difficulties,^[29] emphasizing the fact that the later collection suit on this check was dismissed when neither party appeared in Court on the claim.^[30]

The larger point – and it recalls for us the idea that a higher set of professional standards have been codified in Minn. Stat. § 326.91 – is that there is no evidence that Chase or EWE ever paid for the materials that were received from W&D Sheet Metal. Regardless of whether or not Mr. Do took the time to litigate the claim, reducing his company's injuries to an enforceable judgment or a lien, Chase and EWE had a broader professional obligation to pay just debts and not to require their creditors to pursue them to the local Courthouse.

Financial Irresponsibility Claim 2: The Check to Isanti Ready Mix Company

Likewise, during the Department's investigation of the circumstances surrounding the Graiziger home project, investigators learned that in 2001 Vincent R. Chase had been convicted of criminal issuance of a dishonored check. The check was issued as part of a purchase for concrete mix.

In his words, Mr. Chase offered "no defense" at the hearing on the claim that he had earlier pled guilty to criminal issuance of a dishonored check.^[31] The elements of that crime include not having sufficient funds on deposit, or within a reasonable time, to pay checks that were drawn on the utilized account.^[32]

For all of these reasons, the record adequately supports the imposition of a licensing sanction. It is therefore recommended that disciplinary action be taken against the residential building contractor's license of Extreme Weather Exteriors, Inc.

E.L.L.

^[1] See, Exhibit 1.

^[2] See, Exs. 1, 2 and 3.

^[3] See, Exs. 1, 3 and B.

^[4] Testimony of Vincent Chase.

^[5] See, Ex. 1 and B.

^[6] *Id.*

^[7] See, Test. of V. Chase; Testimony of Matt Rasmussen; Exs. 2, F, G and J.

^[8] See, Ex. 4 and Test. of M. Rasmussen.

- [9] See, Test. of M. Rasmussen; Ex. 2 at 7; Ex. J.
- [10] See, Test. of M. Rasmussen.
- [11] See, Ex. 2 at 7; Ex. J.
- [12] See, *id.*
- [13] See, Ex 2 at 4-6; Ex. 4; Ex. C.
- [14] See, Ex. A, F, G and L.
- [15] See, Ex 2 at 2-3; Testimony of Matt Rasmussen.
- [16] See, Ex. 3.
- [17] See, *e.g.*, Ex. G.
- [18] See, Ex. 2 at 1; Testimony of Charlie Durenberger.
- [19] See, Ex. 6; Test. of C. Durenberger.
- [20] See, Ex. 6.
- [21] Compare, Minn. Stat. § 609.535 (2) an (2a)(a)(3) (2006) with Exs. D and 5.
- [22] See, Test. of V. Chase.
- [23] See, Notice and Order for Hearing, Order to Show Cause, Order for Summary Suspension and Statement of Charges, at 1; Minn. Stat. § 45.027 (7)(b) (2006).
- [24] See, Ex. G.
- [25] See, *id.*
- [26] See, Ex. 2 at 4; Ex. 4.
- [27] See, Exs 2 and B.
- [28] See, Test. of V. Chase.
- [29] *Id.*
- [30] Compare, Test. of V. Chase with Ex. E.
- [31] See, Test. of V. Chase.
- [32] See, Minn. Stat. § 609.535 (3) (2006).